# SUPREME COURT OF THE UNITED STATES.

MICHAEL W. O'BRIEN, et al., Executors,
Petitioners,
vs.
JOHN G. WHEELOCK, et al.,
Respondents.

To the Honorable the Supreme Court of the United States.

Your petitioners, Michael W. O'Brien, Francis F. Palms and Clothilde Palms Book, born Palms, respectfully show unto the Court:

I. That they are the executors of the last will of Francis Palms, lately deceased, of the City of Detroit, and are citizens of the State of Michigan and the defendants, who number about one thousand, are respectively citizens of the States of Illinois, Missouri and other states of the United States than the State of Michigan.

II. Your petitioners by leave of the Circuit Court of the United States for the Southern District of Illinois, in Equity, filed a bill in the nature of a bill of revivor under which the proceedings therein and in the United States Circuit Court of Appeals for the seventh circuit hereinafter stated were had; that as they are advised by counsel the questions involved in said proceedings and hereinafter more particularly stated are of gravity and importance and of general interest upon which uniformity of decision is desirable.

III. The case grows out of the construction of a levee across the Sny Cartee Slough and along the banks of the Mississippi river, in the State of Illinois, from a point in the Township of Fall Creek, Adams county, through Pike county, terminating in Hamburg township in Calhoun county, a distance of about 52 miles, and with a height up to the high water mark of the Mississippi river of 1851. The levee has, during and since its construction, been at all times in the possession and custody of the defendants and their ancestors and assignors through commissioners of their own choosing. It has remained unbroken since 1888, and has grown as solid and secure as a natural embankment. Under the protection of this levee upwards of one hundred thousand acres of land which, before the levee was built were not worth fifty cents an acre, are now worth twenty-five dollars and upwards, and yield most bounteous harvests, one year's crops of which would more than pay the entire cost of the levee.

The amount involved is upwards of eight hundred thousand dollars.

IV. Complainants' bill seeks to enforce against defendants' lands the several assessments levied thereon for the cost of constructing said levee under the provisions of an act of the Legislature of the State of Illinois, hereinafter stated. It is not a bill to enforce contributions to, or collect proportionate amounts of, a gross sum, but simply a bill in the nature of a bill of foreclosure to enforce the liens of several and specific assessments levied on several and specific parcels of lands upon the faith of which assessments the moneys which built the levee were advanced.

The case is not upon a bill to collect a tax and is not within the decisions of Berkley vs. Levee Commissioners,

93 U. S., 264, and Thompson vs. Allen, 115 U. S., 550.

It is entirely different from Litchfield vs. Ballou, 114 U. S., 190; Aetna Life Insurance Co. vs. Middleport, 124 U. S., 534, and cases of like character, in that the complainants in this case do not seek to hold any municipal corporation liable, directly or indirectly, at law or in equity, but simply ask the enforcement of certain assessments against the lands of individual defendants, on the ground that those defendants have so conducted themselves in the premises, that they are estopped to allege any invalidity in the law providing for said assessments.

The federal courts can enforce liens created by State laws and have repeatedly done so.

> Fitch vs. Creighton, 24 How., 159, a street opening assessment.
>
> Idaho & Oregon Land Improvement Co., 132 U. S., 509, a mechanic's lien.
>
> Jones vs. The Great Southern Fireproof Hotel Co., ubi sup.
>
> Hagar vs. Reclamation District, 111 U. S., 701, a levee lien.

The bill implies the possibility, and the evidence shows, that in some cases the assessments may not be collectible because the land owners in those cases have not by their conduct or acts estopped themselves to deny the invalidity of the statute. On this account the original bill filed by Mr. Palms listed separately in the bound book, Exhibit "A," each description of land assessed, the name of the owner, and the amount of the assessment.

In the present bill complainants in Exhibit "X" list the same descriptions of land, the same assessments thereon, and the names of the owners at the date of the assessment as in Exhibit "A," with the addition of the names of the owners at the time of filing this bill. The charges in the

bill are proven by admissions of defendants and by carefully prepared abstracts of title (Record, p. 377), introduced in evidence under a stipulation that they may be received with the same force and effect as the deeds referred to in them (Record, p. 113).

While the proofs are sufficiently full and explicit, to point out and authorize a decree in detail against each of the particular descriptions of lands of the several defendants, whom the Court may find estopped to attack the validity of the assessment, it would involve a long and detailed examination of the testimony, which is very voluminous. Believing this to be the appropriate function of a master under an order of reference declaring the rule of liability, counsel did not ask it of the court below, but submitted short lists of certain typical defendants, whom they claimed to be estopped, with the several descriptions of their lands and the amounts of the respective assessments thereon. (Appendix A to this petition gives a copy of such lists.)

V. The assessments which are sought to be enforced, and from the proceeds whereof complainants ask the payment of the bonds held by them, were levied under the provisions of an act of the General Assembly of the State of Illinois, approved April 24, 1871, entitled, "An act to provide for the construction and protection of drains, levees and other works."

The act is printed in full in the record, pp. 394 to 404.

Its substance is stated in the opinion of the Circuit Court of Appeals.

It is sufficient here to state that the act provided a mode by which drains, ditches, levees and other works which were necessary for sanitary or agricultural purposes might be, upon petition of land owners and occupants, con-

structed by means of the appointment of drainage commissioners and other proceedings in the county courts of Illinois and paid for out of the proceeds of assessments upon the several descriptions of lands benefited.

The act is carefully framed. It requires damages to be *paid* before taking lands for the work, and gives resisting land owners, a hearing before court and jury on all material questions, and affords every safeguard against injustice.

Section 27 of the act provides that when the Court shall confirm the assessments of benefits by the jury it may order the whole amount to be paid immediately or to be paid in installments, and said assessments "shall be a lien on the lands assessed until paid."

Section 35. Empowers the commissioners to borrow money for the construction of the work and give therefor notes or bonds, drawing interest not exceeding 10 per cent, "which notes or bonds shall not be held to make the commissioners personally liable for the money borrowed, but shall constitute a lien upon the assessments for the repayment of the principal and interest thereon."

Section 39 provides: "Any one or more new assessments may be made in the manner hereinbefore provided, on the suggestion of the commissioners—or any owner or occupant of lands affected by the work authorized by this chapter, either to supply any deficiency in any other assessment, or to repair, alter or enlarge, cleanse, protect or maintain any drain, ditch, levee or other

work, constructed by virtue of this chapter."

VI. Under Section 35, above quoted, bonds* were issued by the commissioner of the Sny Levee Drainage District in 1872 and 1875—$499,500 under the assessment of 1872, and $148,500 of the issue under the second assessment of 1875. (Record, p. 81.)

Mr. Palms, relying on the statute and the good conscience and sense of justice of the land owners who would be benefited by said levee, purchased $202,500.00 of the bonds issued in 1872. (Record, p. 372.) Interest was paid to him on the bonds of this issue for the years 1873 and 1874. (Record, p. 372.) A subsequent assessment, to supply a deficiency in that of 1872, was made by the Commissioners in 1875, and Mr. Palms bought all the bonds issued thereunder, amounting to $148,500. It is proven beyond dispute that the location and construction of the levee was paid for by the proceeds of these and other bonds issued by the Commissioners. (Record, p. 81.)

VII. Before the passage of the act of April 24th, 1871, the several tracts of land described in Exhibit "A" constituted a body of land of an average width of from three to five miles, extending fifty-two miles from the mouth of Fall Creek, in Adams County, to Hamburgh Bay, along the east bank of the Mississippi, and between it and the bluffs or high water mark of the river, containing one hundred and ten thousand acres. They included the greater part of several congressional townships, and if reclaimed and protected from periodical overflows of the Mississippi River, would be fertile and healthy.

*These are not bonds in a strict sense but are in legal effect similar to the instruments in New Orleans vs. Warner, 175 U. S., 120, brought up to this court by certiorari.

*Efforts of Land Owners to Construct a Levee.*

The map of the improvement attached hereto is a copy of the one made under the charge of the engineer of the Drain Commissioners, showing the course of the levee and the surrounding lands, found in the record between pages 384 and 385.

From their proximity to the river and to the City of Quincy, a few miles north, and the cities of Hannibal, Louisana and Clarksville, and the valuable cultivated lands in the neighboring region of Illinois and Missouri, they had attracted in an unusual degree the attention of persons seeking homes and others seeking speculative investments. While these bottom lands were sparsely populated, many persons residing on the high lands in the counties of Adams, Pike and Calhoun, in Illinois, and in the cities of Hannibal, Louisana and Clarksville, in Missouri, had bought large bodies of said lands, expecting they would be reclaimed and protected by levees and be made productive and greatly increased in value.

VIII. The protection of these lands by levees had, for many years before the passage of the act of April 24th, 1871, been the subject of consideration and discussion among the owners and occupants thereof as well as among those who knew their condition and their prospective value, and several attempts to construct a levee had been made, but failed, so that before the passage of the act of April 24, 1871, owners and occupants and persons interested in said lands well knew that an act of the Legislature of the State of Illinois was absolutely necessary under the provisions of which the owners and occupants of the lands could be united and a common agency created and authorized to make all necessary plans, estimates and contracts for the construction of a levee, and to borrow money therefor by the issue of bonds or otherwise, to

be secured and paid by assessments on or pledges of the lands benefited.

It resulted that during the session of the Legislature of Illinois in 1870 and 1871, the defendant Charles N. Clark, with money advanced for the payment of his expenses by other defendants named, and with the knowledge and approval of all the then known occupants and owners of said lands, procured from the Legislature of the State of Illinois the passage of the act of April 24th, 1871, which said owners and occupants believed and expected would effect the reclamation and protection of said lands. (Clark's testimony, Record, p. 58 et seq., 77 et seq.) Immediately after the passage of said act the defendants, who were the owners and occupants of lands described in said Exhibit "A," availed themselves of the provisions of the act and for the information of all interested caused it to be published at length, or in its substantial parts, in the Hannibal Courier and Pike County Democrat and other newspapers which were published and circulated in the cities of Quincy, Hannibal and Louisana, and Clarksville and Pittsfield, and also had a large circulation among the owners and occupants of said lands. In addition to these publications, public meetings, called and extensively advertised by Clark and others named in the proofs, were held at various prominent points in the district of lands intended to be reclaimed and protected, and in its immediate neighborhood. At these meetings, which were largely attended, Clark and others interested read and explained the provisions of the act of April 24th, 1871, which were approved and accepted by the owners and occupants of said lands, and they devised a plan for a corporation to be organized by them with a capital stock of $100,000 to raise the money to put said act into effect. (Clark's testimony, ubi sup.)

*Organization of Mississippi Levee and Drainage Company. Petition for First Assessment.*

By the means above mentioned all of the owners and occupants of the lands and the persons interested in them were fully informed of the passage of the act and of the steps being taken under its provisions for the reclamation and protection of the lands. Many of the then owners and occupants of lands who are defendants to this suit are shown by the proofs to have organized and subscribed to the capital stock of this organization as shown by the Articles of Association and list of subscribers, which are in the proofs. (Transcript p. 2124.)

IX. Acting under these laws, certain of the defendants, within the provisions of the Act of 1871, filed at the August term, 1871, of the County Court of Pike County, a petition under said act (a copy of which is given Record, pp. 442-447), in all respects conforming to the requirements thereof, and praying for the appointment of commissioners in the premises. Due notice of the filing of such petition was given, and at its September term, 1871, the said County Court of Pike County found that the proposed work was necessary and useful for the drainage of the lands, and appointed William Dustin, George W. Jones and John G. Wheelock, Commissioners, who duly qualified and organized as the Sny Island Levee Commissioners. (Record p. 79.)

On the 23rd of November, 1871, these Commissioners filed a full report, answering all the requirements of the statute, accompanying it with the surveyor's estimates and report, a map of the district, and the profile of the work to be done, made by a competent engineer.

X. At the December term, 1871, of said Pike County Court, due proof of notice to all concerned was made, and the report of the Commissioners *was duly approved and confirmed without objection by anyone.* A jury was

ordered impaneled and duly sworn to examine the lands, assess the damages and benefits, and make out a proper assessment roll. (Record pp. 79 and 391. Profiles in transcript, but under stipulation not printed.)

The order summoned a jury of 12, although the act only required a jury of 6. This cured any objection to that provision in the act. (Campau vs. Detroit, 14 Mich., 376.)

The proceedings of the jury were regularly had upon due notice to all the parties interested, their report and assessments filed with the Court, and spread upon the record. Certain appeals were taken from these assessments, but as to all the others it was confirmed, and spread upon the records. The Court directed that the assessments be paid in ten annual installments, commencing in 1882 with interest from the first day of October, 1872. Certified copies of said order for Pike, Adams and Calhoun Counties, were made by the Commissioners and were recorded in said counties on or before December 18th, 1872. The Commissioners acquired the title to the lands required for the site of the levee, and in reliance upon said assessments, contracted for the construction and completion of said levee, issued bonds under an order of the Count to the amount of $499,500 (testimony of Geo. W. Jones, Commissioner, Record p. 81), and used them to construct the levee. The complainants' testator purchased $202,500.00 of said bonds.

XI. Subsequently it became necessary to raise an additional sum to complete the levee and a second petition was filed and proceedings similar to the first were had thereon, resulting in additional assessments of $148,500. Upon these assessments the Commissioners issued under orders of Court and sold to the complainants' testator

through the contractors who built the levee, bonds to the amount of $148,500.00 and expended the same in the construction and completion of said levee. The complainant's testator purchased said bonds, relying on the facts before mentioned and upon the further fact that the Commissioners had paid the interest for the years 1873 and 1874 on the bonds which he held.

XII. The contractors constructed the levee in accordance with their contract and the plans and specifications and surveys of the Commissioners, and to the approval of the engineer in charge (testimony of Jones ubi sup.; E. L. Corthell, Record p. 365; H. W. Parkhurst, Record p. 344) to such a hight that the lands were protected from overflow by the Mississippi River and were reclaimed and rendered healthy and productive. (Testimony of Corthell, Parkhurst ubi sup.) The Commissioners made some effort to collect some installments of interest on said assessments, under the section of the act of 1872 providing for the collection of said assessments "in the same manner as State and County taxes" which were resisted by certain land owners, and in January, 1876, the Supreme Court of Illinois, after said levee was wholly constructed, in Updyke vs. Wright, 81 Ills., 49, and Webster vs. People, unreported, refused to enforce their collection on the ground that the law of 1871 was unconstitutional because the act was not within Section 31, Article IV, of the Constitution of the State, and because the General Assembly of Illinois had no power under Section 5, Article IX, of the Constitution of the State to vest the Commissioners or jury selected or the County Court with authority to assess and collect taxes or special assessments for the contemplated improvement.

*Trust Deeds to Commissioners.*

XIII. Although the whole amount of complainants' bonds and those of others were unpaid, the Commissioners continued in possession of said levee, and by the use of it protected their own lands and the lands of the other defendants from overflow, at the request of the land owners, certain of whom provided a fund for keeping the levee in repair by conveying to said Commissioners, by deeds of trust, about thirty thousand acres of land.

The trust deeds described the grantees therein as "Commissioners appointed by the County Court of Pike County under and by virtue of" the Act of April 24, 1871; recited the construction of the levee under said act and the decision of the Supreme Court of Illinois against the validity of the assessments, and authorized the trustees within certain limitations to assess, on the lands thereby conveyed annual assessments up to fifty cents per acre for such amounts as were deemed by the Commissioners necessary to maintain and keep in repair said levee, but forbade the assessment of any sum to pay for the construction of the levee. Under these deeds much money was raised and expended upon the levee. (Trust deeds, Record p. 460). The answer admits $30,000. (Record pp. 55-33.)

XIV. Not before the 26th day of January, 1887, did the Commissioners cancel and release these trust deeds, and then this was done in pursuance of another and more extensive scheme for the continuance of said levee and the defeating of the complainants from recovering the moneys furnished by him for the construction of the levee, namely, the organization of the Sny Island Levee Drainage District, hereinafter more fully described.

XV. In the meantime, on the 4th day of May, 1878, while these trust deeds were in force and the Sny Island

Levee Commissioners were collecting moneys by means thereof, Francis Palms, the complainants' testator, filed a bill on behalf of himself and others against the Sny Island Levee Commissioners in the Circuit Court of the United States for the Southern District of Illinois in equity. It is the original bill to which the bill in this suit is supplemental and in revivor.

The bill charged more fully and at length the facts hereinbefore stated, with the additional averments that all the owners and occupants of the lands assessed had full knowledge that the entire expense of said levee was paid for by said Commissioners out of the money received from said Palms and other purchasers of bonds. (Record, p. 410; statement of contents of same, Record, pp. 9-14.) In it Complainant Palms prayed among other things for a decree for an accounting of the moneys received from him by the Commissioners as aforesaid and used in the construction of the levee and the interest thereon; that he have for such amount a lien upon the levee and works and the lands acquired by the Commissioners for the site thereof and upon the assessments and interest thereon upon the other lands described in Exhibit "A;" that the Commissioners be ordered to proceed to collect said assessments and interest under the order and direction of the Court; for the appointment of receivers to take charge of said levee and all books and papers of said Commissioners and to collect under the direction of said Court said assessments and interest; and for other and further relief. (Record pp. 13 and 19.)

XVI. The defendant Commissioners, on the 13th day of March, 1879, filed their answer to said bill, admitting

substantially all the material allegations therein and specifically admitting that they had accepted the levee when it was completed by the contractors, and received it as a complete levee, sufficient in hight and strength to protect said lands from overflow. (Original answer, Record p. 429; statement of contents, Record pp. 14-16). In said answer they claimed that because of the registration of said bonds with the Auditor of Public Accounts of the State of Illinois that the bond owners had thereby elected the mode prescribed by the supplemental act of 1872 for the collection of interest on said bonds and that they, said Commissioners, were by said election relieved from the duty of looking after the same, and were not responsible for the failure to collect the moneys to pay said interest, and were without any duty to perform in respect to said assessments. That certain land owners had at all times opposed the proceedings which subjected their lands to assessments for benefits on account of said levee, and had refused to pay interest accruing on said assessments, and because of this, other land owners otherwise inclined to pay their assessments, saw the futility of so doing, unless payment could be enforced against all alike, which resulted in a return by the township collector of all or nearly all of said land owners as delinquents. Thereupon the County Collector made application for judgment on assessments against said delinquent lands to the Pike County Court, and some of the land owners so opposing said assesssments filed objections to the judgment, setting up that the law under which the assessments were imposed, was unconstitutional. That the Commissioners employed counsel and the County Court gave judgment against the lands. The resisting land owners appealed to the Circuit Court, where the judgment below was again

confirmed. Thereupon the resisting land owners appealed to the Supreme Court of the State, stipulating that one appeal should be decisive of all assessments. The defendant Commissioners employed eminent counsel on the argument of the case in the Supreme Court, and upon full argument said Court decided adversely to the right to collect said assessments.

Thereupon they petitioned for a re-argument of said cause, but their petition was overruled, and the final judgment rendered by the Supreme Court was adverse to the right to collect said assessments, and they submitted that the decision of said case was decisive against any right upon their part to enforce any payment of any assessments in any manner.

They also averred that "as Commissioners they are not now, and never have been in any actual possession of any part of said levee, except for the purpose of constructing, maintaining and repairing the same; and they are advised and believe they never had title to any portion of said levee on account of the unconstitutionality of the law under which said work was done; and since said law was declared unconstitutional these respondents have only exercised authority over said levee in warning parties against injuring said levee, but this was in their private capacity, at the request of a portion of the land owners, who supplied them with funds for that purpose, in whose behalf they have, in like private capacity, tried to keep said levee in repair."

XVII. Thereupon, on March 13th, 1879, the said cause was set down for hearing upon bill and answer, and after argument and consideration by the Court, the United States Circuit Court for the Southern District of Illinois, in Equity, Judge Drummond presiding, entered a decree

containing among other matters the following provisions:

"That the defendants retain the right of way, levee and other works, and keep and preserve and protect the same under the order and control of this Court for the benefit of the complainants and all other persons interested therein."

"That the complainants, and all other persons who may have advanced money to the defendants for the right of way, for the construction of said levee and other works, or who may be the holders of any of the bonds issued by the defendants to raise money for the purposes aforesaid, who may come into this suit and contribute their proper proportion for the expenses thereof, have liberty to go before the Master and produce their bonds and coupons, and make proof of the amount due them of principal and interest."

Said decree referred the cause to John A. Jones, Master in Chancery, to take proofs, upon proper notice, of the amounts due the complainants, and other parties, and to make report to the Court with such proofs of the amounts found due by him to each and every party who appeared before him, with the grounds of his several findings, and also provided that after the coming in of said report, and the approval thereof by the Court:

"The said complainant, and other persons, have the liberty to exhibit and file their supplemental bill or bills against any or all of the present or former owners of the lands alleged in said bill to be benefited by said levee, to compel them to contribute to the payment of the amounts found due, as aforesaid, and for such other and further relief as they may be advised they are entitled to," * * * "and the said complainant is at liberty to use the names of the defendants in such supplemental bill if they are ad-

vised it is necessary for them to do so upon tendering sufficient indemnity." (Record, pp. 437, 438.)

XVIII. Afterwards, on July 7th, 1880, a further decree was rendered in said cause, overruling the exceptions of defendants to said Master's report, and confirming and approving the same and adjudging the amounts due to the complainants' testator.

Said decree further declared "that the several sums of money so found due are a lien upon the assessments made under the order of the County Court of Pike County, upon the lands described in the bound book (Exhibit "A") with complainants' bill, and upon the said lands as provided in the 27th and 37th Sections of an Act of the General Assembly of the State of Illinois entitled "An Act to provide for the construction and protection of drains, ditches, levees and other works," approved April 24th, 1871, "and it further appearing to the Court that the defendant Commissioners have no money in their hands for the payment of the amount so found and adjudged to be due the said several complainants, and it also appearing to the Court from the allegations of the complainants' bill, and not denied by the defendants in their answer thereto, that they have taken no steps for the collection of the assessments made upon said lands for the repayment of the moneys borrowed by them, and the bonds and coupons issued by them, it was ordered by the Court that the complainants have the right and liberty to proceed in this Court in the names of said defendants as complainants as such Commissioners or in their own names as complainants against the lands described in said Exhibit "A," and the owners thereof, or such lands and the owners thereof, and other persons

and said Commissioners, as they may be advised are liable for or bound to pay the sums found to be due to the complainants as aforesaid, jointly or severally, by a bill or bills, original or supplemental or otherwise, as they may be advised, for the recovery of the amounts found due them as aforesaid, and also for the costs of this suit." (Record, pp. 438 to 441.)

XIX. After the decision of the Supreme Court of Illinois in the Webster case, and after the filing of this original bill by Palms, and while the last mentioned decree was in full force and the Commissioners were in possession of the levee, the People of the State of Illinois, at an election held November 5, 1878, adopted an amendment to Section 31 of Article 4 of the Constitution of the State, to read as follows:

"The General Assembly of Illinois may pass laws permitting the owners of lands to construct drains, ditches and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts, and vest the corporate authority thereof with power to construct and maintain levees, drains and ditches and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this State by a special assessment upon the property benefited thereby. (Star & Curtis' Annotated Statutes of Ills., p. 122.) This amendment was proposed in the Legislature of Illinois by one of the defendants. (Record, p. 87.)

Under the authority of this amendment the General Assembly of the State of Illinois passed "An Act to provide for the construction, reparation and protection of drains, ditches and levees across the lands of others for agricultural, sanitary and mining purposes and to pro-

vide for the organization of drainage districts." Laws of 1879, p. 120, Starr & Curtis' Annotated Statutes, p. 919. The answer in this case admits that the submission of this amendment and its adoption by the people, and the passage of this statute was secured in part by the efforts of some of these defendants. (Record, pp. 55-33.) The act was introduced by one of the defendants in this case. (Record, p. 87.)

It took effect May 29, 1879. It provided for the formation of drainage districts and invested them when formed with the power not only to construct drains, ditches and levees for agricultural, sanitary and mining purposes, but also to maintain and keep in repair any such drains, ditches or levees "heretofore constructed under any law of this State." Section 2. And in cases where a levee had been theretofore biult "under any law of this State," the annual assessments for keeping the same in repair were made due and payable on the first of September. The Supreme Court of Illinois say, in Blake vs. People, 109 Ill., 504, that "the only law to which this could refer was the" (levee and drainage) "act of April 24, 1871."

XXI. Thereafter, on the 26th day of January, 1880, a number of land owners, whose lands were described and included in the original assessments for the construction of the levee and in the original bill filed by Francis Palms, filed a petition, conforming in substance to the requirements of said last mentioned act. In said petition they describe the route and terminus of the said levee, alleging that this levee "was constructed under the laws of the State of Illinois, then in force in the Counties of Adams, Pike and Calhoun, in the years 1872, 1873 and 1874." They

further allege that "by proper repair and maintenance of said levee, the lands aforesaid" (being part of the lands described in the original bill of Palms and in the bill filed by his executors, amounting in the aggregate to about 90,000 acres) "would be reclaimed and brought into cultivation, and that, in addition, it would greatly improve the sanitary condition of the locality through which said levee passes." They also alleged that it was absolutely necessary for the health and proper drainage and protection of said land, that said levee be repaired as speedily as possible. In this petition the descriptions of lands to be benefited or damaged by the repair and maintenance of said levee so far as they went, were substantially the same as those contained in Exhibit "A" to the original bill of Mr. Palms. They then prayed that a drainage district, to be known as the Sny Island Levee Drainage District, be formed out of the said lands subject to periodical overflow by the Mississippi river in the townships aforesaid, for the repair and maintenance of said levee, according to the statute, and that commissioners be appointed with the powers and authority named in the Act of May 29th, 1879, and that they be directed to do all acts provided in said law for repairing levees, ditches and drains from assessments to be ordered, and for other and further relief. (Answer of defendants, pp. 55-34 bound book, Exhibit "10," Record, p. 499.)

Such proceedings were had thereon that the County Court of Pike County, by all necessary and legal orders, duly created the Sny Island Levee Drainage District, which, in the year 1880, received the surrender of the levee from the original Sny Commissioners, and took pos-

session and control of the levee and other works, and still has control and possession thereof, with the knowledge and consent and approval of the defendant Commissioners in the Palms suit, and of all the defendants in this suit, who had also notice that the said levee had been built in part by the money received for that purpose from said Francis Palms. (Answer of defendants, Record, pp. 55-34, bound book.)

XXII. On the 24th day of November, 1886, the complainant in the original suit died, and on the 4th day of January, 1889, the complainants in this suit, who had qualified as executors and trustees under his will, were authorized to continue the prosecution of said suit, and filed the present bill by leave of court.

The complainants are still the owners and holders of all the bonds described in the original bill of said Francis Palms, deceased, and in the report of the Master as aforesaid, and the defendants have not paid any moneys whatsoever on acount of the said bonds or the interest thereon. (Testimony of Mr. O'Brien, Record, p. 372.) The bonds belonging to the complainants which have become due are again specifically produced and proved. The installments of the first assessment in 1872, which fell due prior to the filing of this bill in 1889, were for $50,000 in each of the years 1882, 1883, 1884, 1885, 1886, 1887, 1888, aggregating $350,000. (Record, p. 22.) None of the installments of the assessment of 1875 were due when the present bill was filed, as this assessment was made payable in 1892, 1893 and 1894.

XXIII. It appears from the proofs that the defendant Commissioner Westlake died and no successor has been

appointed to fill his place, but the other defendants, Wheelock and Jones, have remained Commissioners as aforesaid.

The proofs also show that very many, if not all, of those of said defendants who have acquired title to any portion of said lands since the levying of the assessments of 1872 and 1875, respectively, took the same with full notice of the existence of such assessments, and the proceedings in the Pike County Court in relation thereto, and the issue of bonds by the Commissioners, and the sale thereof to complainants' testator, as well as notice of the expenditure of the proceeds thereof in the construction of said levee, and that the levee was constructed solely with the money thus furnished by complainants' testator and others, and that those moneys have not been repaid. They also show that the defendants, with like knowledge and notice, have appropriated and used said levee in the protection of their lands from overflow by the Mississippi river, for a long time past, and still so appropriate and use the same, but none of the defendants have, since the years 1873 and 1874, ever contributed any sum of money whatever for the reimbursement of complainants' testator for the moneys advanced for the construction of said levee.

XXIV. They show that certain defendants participated in the issue and sale of said bonds to complainants' testator, and in causing said proceeds to be expended in the construction of said levee by actively soliciting and procuring the passage of the act to provide for the construction of levees, approved April 24th, 1871. That certain other defendants participated in causing the bonds to be issued and sold and the proceeds expended in the

construction of the levee by subscribing to the stock of the Mississippi Levee Drainage Company, organized for the purpose of giving effect to the act of April 24, 1871, and to raise money to do the necessary work prior to the steps taken in the County Court for Pike County. (Clark's testimony, Record, p. 59.) That certain other of the defendants are purchasers with notice from last described land owners.

XXV. That all the defendants who acquired title to the lands now claimed by them since May 4th, 1878, are purchasers with notice because the original bill of the complainants' testator was filed on that day, and is still pending and of record in this Court; that in addition to the pendency of said bill the decrees thereupon of March 13, 1879, and July 7, 1880, putting the levee into the hands of the Commissioners as receivers were full notice of the complainants' equities, to any subsequent purchasers of the lands in question.

XXVI. That certain of the defendants participated in causing the bonds to be issued and sold and the proceeds expended in the construction of the levee and in causing the assessments to be made on the lands benefited by said levee (specifically described in Exhibit "A") by signing and presenting the original petition for the construction of said levee to the Pike County Court in August, 1871. (Record, pp. 55-40, original petition; Record, pp. 442 to 447.)

That certain other defendants are purchasers with notice from the last named defendants.

XXVII. That certain other defendants participated in procuring the issue and sale of said bonds and the expenditure of the proceeds thereof in the construction of the

levee and in causing the lands to be assessed by order of the Pike County Court by filing on the 30th day of November, 1874, the petition for the second assessment in 1875. (Record, pp. 55-40.)

That certain other defendants are purchasers with notice from some of the last named defendants.

XXVIII. That certain other of the defendants, well knowing that the levee had been constructed with the moneys of the complainants and others, and that the amounts of complainants' bonds and interest thereon were wholly unpaid, and knowing and consenting to all of the proceedings of the Pike County Court, and having authorized the assessments of their lands for the payment of the principal and interest of said bonds, combining with the defendant commissioners, whose duty, as said defendants well knew, it was to collect said assessments and pay the amount thereof to the complainants in discharge of the principal and interest of said bonds and for the purpose of defeating the just claim of defendants, procured the defendant Commissioners to take exclusive possession and control of the said levee as their agents and use and appropriate the same to the protection of their lands with the powers and under the provisions of certain trust deeds, which said trust deeds stipulated that no part of the funds collected by means thereof should ever be applied upon the indebtedness created by or on account of the original construction of said levee. (Record, pp. 55-41.)

That certain other defendants were purchasers with notice from some of the last named defendants.

*Acts of Estoppel of Land-owners—Constitutional Amendment—Organization of Sny Island Levee Drainage District.*

XXIX. That certain other defendants actively participated in procuring the submission by the Legislature of Illinois and the adoption by the people of the constitutional amendment of 1878 and the passage of the act of May, 1879, under the provisions thereof.

XXX. That certain other defendants filed the petition in the Pike County Court for the creation of the Sny Island Levee Drainage District and were parties to the proceedings therein. (Record, pp. 55-41, 55-48.)

That certain other defendants are purchasers with notice from some of the last named defendants.

XXXI. That certain other defendants were interested in the lands in which they are now interested and which are described in Exhibit "X" on the 26th day of January, 1880, and in pursuance of the statute were severally made parties to and had due notice of and are bound by all of the proceedings for the organization of said Sny Island Levee Drainage District.

That certain other defendants are purchasers, with notice from some of the defendants last named.

XXXII. That certain other defendants are heirs-at-law of ancestors or devisees and legatees of persons who took part in some or all of the proceedings before mentioned, by which said bonds were issued and assessments levied and the levee constructed.

XXXIII. That certain other defendants have acquired title to the lands in which they are now interested as set forth in said Exhibit "X" through deeds of conveyance expressly recognizing and agreeing to pay the liens of the assessments upon said tracts of land for the amounts ad-

vanced by complainants' testator for the construction of said levee and other works.

XXXIV. That every one of the defendants have by the payment of assessments by themselves or their grantors, made upon their lands by the said Sny Island Levee Drainage District, having at the time of such payment full knowledge that the levee and other work were constructed with the funds furnished by complainants' testator and of the decrees of this court of March, 1879, and July, 1880, declaring a lien in favor of the complainants' testator, and also having full knowledge that no part of the amounts due to the complainants had been paid, approved and ratified the acts of said Sny Island Levee Drainage District in appropriating the said levee for the protection of the said lands of said defendants.

XXXV. That said Sny Island Levee Drainage District has annually since its organization made large assessments upon nearly all said tracts of land which are rightfully subject to the lien of the assessments for the payment of complainants' bonds, for the purpose of raising money to pay the cost of the repair and maintenance of said levee, and that said defendants pretend that said assessments are a lien upon said lands paramount to complainants' lien, and said defendants intending to defeat the just lien of complainants by certain pretended proceedings in some court, have caused many of said tracts to be sold for the assessments made through said Sny Island Levee Drainage District and have caused deeds on said sale to be made.

XXXVI. That before the construction of said levee the entire body of lands which includes the tracts assessed for the construction of the said levee and each of the

tracts thereof, was so wet and swampy and subject to such frequent overflows by the Mississippi River, that they did not exceed in value an average of fifty cents per acre. That while the average assessments per acre greatly exceeded the then market value of said lands, it was expected and promised by the land owners and the commissioners that the construction of said levees as proposed, would drain said lands and protect them from overflow, render them healthy and productive, and so greatly enhance them in value as to make them ample and desirable security for said assessments.

XXXIX. That complainants' testator, relying upon said representations, was induced to purchase and pay for said bonds, in the belief that after said levee was completed said lands would be drained and protected from overflow and made healthful and profitable for cultivation and enhanced in value to an average of twenty-five dollars per acre, and that thereby the assessments on said lands would become an adequate security for the amount of said bonds.

XL. All the defendants who appeared, demurred to the Bill of Complaint on the following grounds:

(1) Want of equity in the bill.

(2) That the claims of the complainants have become stale, and by reason of the complainants' negligence in pressing and enforcing their rights, are not now enforceable against the defendants.

(3) That complainants and their testator have been guilty of laches and have so long remained idle, that the rights of many outside persons have intervened so that complainants are estopped to assert their rights against the defendants.

(4) That the allegations in the bill do not raise any implied promise on the part of the defendants, nor any equitable obligation to pay the bonds or any sum of money.

(5) That the facts alleged in the bill do not entitle complainants to any lien or charge upon defendants' lands.

(6) That the complainants' remedy is at law.

Upon the argument of the demurrers, Messrs. Hay, Greene & Humphrey assigned as additional grounds of demurrer *ore tenus:* that this court had no jurisdiction to collect the assessments in the mode prayed for in the bill, nor in any other way, and depending thereon, that there is *no lien on the lands* in favor of the complainants.

XLI. These grounds of demurrer raised all the questions of law which were afterwards raised at the final hearing except (1) the question of the sufficiency of the original construction of the levee and its conformity to the requirements of the contract and (2) the effect of sales of lands, on which drainage assessments had been levied, for general taxes pending the litigation.

XLII. The demurrers came on for hearing before the Circuit Court of the United States for the Southern District of Illinois in equity, Judge Gresham presiding and were all overruled.

XLIII. Thereupon the demurring defendants and other defendants answered, full and extensive proofs were taken and the cause submitted to United States District Judge William J. Allen on the 9th day of November, 1895. On the 10th day of February, 1897, he entered a decree dismissing the bill of complaint with costs. (Opinion Record, pp. 474-489.)

*Decision of Circuit Court on the Merits and Decision of Circuit Court of Appeals.*

XLIV. An appeal was perfected on the 5th day of April, 1897, the record on appeal was filed in the United States Circuit Court of Appeals for the Seventh Circuit on the 30th day of June, 1897, and the cause came on and was heard on the 7th and 8th of June, 1898, before Mr. Justice Harlan, Circuit Judge Woods and Circuit Judge Showalter. The latter took part in the hearing but died before participating in the decision of the case, which was announced on the sixth day of June, 1899, by Mr. Justice Harlan and Judge Woods.

XLV. Your petitioners further show that Judge Drummond in the orders of 1879 and 1880 sustained the right of your petitioners' testator to enforce in a court of equity the assessments or some of them here in question, notwithstanding the decision of the Supreme Court of Illinois that the law of 1871 was unconstitutional, and that Judge Gresham also sustained the right of complainants to file the bill in this cause and the theory thereof, by overruling the demurrers of the defendants after full argument thereon but now, after full proofs have been taken at great expense establishing the facts charged in the bill the District Judge and two of the Judges of the Circuit Court of Appeals—Judge Showalter not participating in the decision although he took part in the hearing—have decided in opposition to the decisions of Drummond and Gresham and dismissed the bill of complaint of your petitioners.

XLVI. Your petitioners respectfully represent that the decision of the Circuit Court of Appeals is erroneous and that there are several questions involved in this litigation of gravity and importance and of general interest upon which the decision of the Circuit Court of Appeals in

this case is in conflict with a decision of this Honorable Court and with numerous decisions of the Federal and State Courts.

(1) The Court of Appeals held that none of the defendants were estopped from setting up as a defense to the bill the unconstitutionality of the law, upon the faith of which the money to construct the levee was secured from complainants, although the record established beyond dispute the following facts:

That certain defendant land owners formed and subscribed to the stock of the Mississippi Levee Drainage Company "for the purpose of carrying into effect" the levee law of 1871 (Record, p. 59), "and which furnished the means necessary to do the preliminary work." That numerous public meetings were held in the leading towns of Pike County in and near the levee district, which were quite freely advertised by handbills, at which the law was read and its provisions explained and contributions were obtained from defendant land owners for the preliminary work under the act of 1871. Articles to like effect were published in Hannibal Courier. (Record, pp. 60-62.) Other defendant land owners petitioned the County Court of Pike County to commence proceedings under the act, one hundred and thirteen in first petition (Record, p. 447), and one hundred and twenty-three in the second petition (Record, pp. 26, 27, 442); that all resident land owners had personal, and all non-resident land owners constructive, service of notice of said petition; that none took any steps to restrain said proceedings, but all stood by and encouraged the work until it was completed; that Wheelock and the other commissioners "acting for such land owners" authorized the

publication of Pamphlet A (Record, p. 385), which contained opinions of eminent counsel that the law was constitutional and the proceedings under it valid, and the certificate of the commissioners (Record, p. 390): "*There is no opposition to the improvement, but on the contrary, it is unanimously demanded by the owners of the land,*" and also contained a like certificate of the Judge of the Pike County Court; (Record, p. 391) that interest assessments were paid by the land owners, and the interest on the first issue of bonds was paid to Palms for 1873 and 1874 by the commissioners (Record, pp. 385, 410), thereby inducing Palms to take the whole issue of 1875 in the sum of $148,500. (Record, p. 372.) The defendant Wheelock was a land owner and one of the Levee Commissioners. The record shows the following acts of estoppel as to him: "He knew Clark was undertaking to get the law through the legislature (Record, p. 167), signed the petition for the appointment of commissioners and the institution of proceedings under the act (Record, p. 446), accepted the office of commissioner (Record, p. 66), was active in the proceedings to acquire title to the site of levee by voluntary deeds, made a written report to the Court; executed the contract for the construction of the levee (Record, p. 67); paid the interest on the bonds for the years 1873 and 1874 (Record, pp. 385-410); authorized the publication of the pamphlet containing the certificate of the commissioners (Record, pp. 389-390), "that there was no opposition to the improvement, but on the contrary, it was unanimously demanded by the owners of the land," and containing opinions of eminent counsel that the proceedings were valid and the assessments legal (Record, pp. 387-9); delivered the bonds to the contractors in payment of their work; accepted the trust under the trust deed and

collected assessments thereunder to repair and maintain the levee (Record, p. 68); held possession of the levee as receiver under appointment of the Federal Court in the original bill filed by Mr. Palms in the Federal Court; without authority from that Court turned it over to the present Sny Island Levee Drainage District, which still holds possession of it and with it *protects his lands from overflow.*

Defendant Clark's conduct and acts of estoppel are, if possible, more binding. He was the head and front of the whole scheme from its very inception; procured the drawing up and passage of the law; called and addressed meetings of land owners to get action taken under the law; got up the Mississippi Levee Drainage Company; as he says, "officiated as the organizer generally and did all the talking" (Record, p. 60); went over the proposed route of the levee with commissioners and commissioners' engineer; obtained, with assistance of Mr. Chamberlain, another defendant land owner, the signatures to the petition to the Pike County Court; went with the commissioners' engineer and jury when they viewed the route and made their assessments; "made all the publications the law required;" posted the notices; was up and down the levee so often that his "horse got so that he knew the places almost;" in fact, did everything in his power to get the levee constructed by money and work advanced on the faith of the act. (Record, pp. 58, 65, 77, 93, 106, 114, 246.)

The record also shows that many other defendants who are specifically named participated in some or all of the above named ways in invoking action under the statute of 1871 and inducing contractors and others to invest their money in the enterprise upon the faith of the assessments to be made under the law.

*Questions of Gravity and Importance—Conflict of Decisions with U. S. Supreme Court and Supreme Court of Illinois.*

This ruling of the Circuit Court of Appeals is, we respectfully submit, in express conflict with the principle of estoppel enunciated in Daniels vs. Tierney, 102 U. S., 415, citing authorities, and quoting p. 421 with approval this language from Ferguson vs. Landrum, 5 Bush. (Ky.), 230: "Upon what principle of exalted equity shall a man be permitted to receive a valuable consideration through a statute procured by his own consent or subsequently sanctioned by him or from which he derived an interest and consideration, and then keep the consideration and repudiate the statute."

The decision of the Circuit Court of Appeals disregards and is opposed to the decision of the Supreme Court of Illinois in Blake vs. The People, 109 Ills., 504, and the limitation put by the court upon the effect of Updike vs. The People, 81 Ills., and People vs. Webster, unreported. In the Blake case, p. 521, speaking of the levee and law here in question the Supreme Court of Illinois say:

"It is not accurate to say, merely because a law is repugnant to some provision of the Constitution as in favor of particular rights, it is no law for any purpose. The respects wherein the act of April 24, 1871, was condemned as being unconstitutional were only as affecting those over whose lands the drains, levees, etc., were proposed to be constructed without the owners' consent, and those against whose property it was proposed to assess the costs of constructing such drains or levees without their consent. As to all other persons, and for all other purposes, the act was a valid law. As to those who were seeking to construct the drain, levee, etc., and who were promoters of the corporation, and to

those who otherwise relinquished all right to interpose these objections to the validity of the law—as, for instance, those who gave the right of way for the drains and levees, and who voluntarily paid their special assessments—the law was not void. Cooley's Const. Lim. (Est. ed.), 181; Baker vs. Braman, 6 Hill, 47; Embury vs. Connor 3 N. Y. (3 Comst.) 511. And precisely the same must be true as to whether the construction of the levee was in excess of the authority conferred by the statute. As to those who did not, in some proper way, give their consent thereto, and whose property was proposed to be taken or damaged thereby, or to be charged with the expense whereof, the act of building the levee was not 'under any law of this State;' but as to those who built the levee upon their own land, or who voluntarily consented that others might build it there, and to those who voluntarily built it, and who voluntarily paid their assessments for that purpose, it was 'under the law of this State.'"

It is also, we respectfully submit, in conflict with the following decisions in cases in which the facts are substantially similar but not so strong as in the case at bar:

Ferguson vs. Landrum, 1 Bush (Ky.), 548.
Ferguson vs. Landrum, 5 Bush (Ky.), 230.
State vs. Van Horn, 7th Ohio St., 327.
Kellogg, Treas., vs. Ely, 15 Ohio St., 64, a drainage tax case.
*People vs. Murray, 5 Hill, 468.
Motz vs. City of Detroit, 18 Mich., 495.
Jackson vs. City of Detroit, 20 Mich., 248.
*City of Burlington vs. Gilbert, 31 Iowa, 356.
Wiggin vs. Mayor of New York, 9 Paige, 16.
Re Application Edward Cooper, 93 N. Y., 507.

*Bidwell vs. City of Pittsburg, 85 Penn. St., 412.
*Dewhurst vs. City of Allegheny, 95 Penn. St., 437. an action at law.
Ricketts vs. Sprasker, 77 Ind., 371.
*Tabor vs. Ferguson, 109 Ind., 227.
*State vs. Mitchell, 31 Ohio St., 592.
*City of Columbus vs. Sohl, 44 Ohio St., 479.
*City of Columbus vs. Sly, 44 Ohio St., 444.
*Muncey vs. Joest, 74 Ind., 469, a drainage case.
*Nervius vs. Otter Creek, etc., Co., 36 Ind., 189, action at law to recover a drainage assessment.
*Flora vs. Cline, 89 Ind., 208.

These decisions are not confined to the rule that equity will not relieve *a complainant* whose conduct has estopped him to ask the relief prayed. Daniels vs. Tierney and the other cases marked with an asterisk are cases where the estoppel was enforced against defendants, in actions to recover the assessments.

(2) The opinion of the Circuit Court of Appeals states that "these authorities when carefully examined do not, we think, apply to a case in which the circumstances are so peculiar as those disclosed by this record. All who had any connection with the passage of the act of 1871, or who desired its passage, acted as we may assume in good faith and in the firm belief that its provisions were not inconsistent with the Constitution of the State. It cannot be said that any one was guilty of fraud. No assurances of an affirmative character were given by the land owners to those who constructed the work, or to those who, like Palms, purchased the bonds after they were executed and delivered to the contractors.* The

*This statement is not strictly accurate. Defendants Wheelock and the two other commissioners certified to Skelsey, Fuller and Pierce, the contractors, and to Pierce and Brower, financial agents, for use in selling the bonds, the printed pamphlet. (Record, pp. 385-393.) "There is no opposition to the improvement; but, on the contrary, it is unanimously demanded by the owners of the lands. (Record, pp. 389-390.)"

land owners, the contractors, and the purchasers of bonds all had equal opportunities of information, and one class was no more to be charged with knowledge of the law than another class. It is a case of an honest mistake as to the competency of the legislature to do what it attempted to do, no one being misled by the assurances and representations of others. The entire argument of learned counsel for the plaintiffs on this part of the case leaves out of view, or assumes to be of no consequence whatever, the fact, apparent on the face of the act of 1871, that what the land owners, proceeding under it, had in view was not simply to have a levee constructed, but to have a sufficient levee, which could be repaired from time to time and permanently maintained under legal authority. In the very nature of things, it cannot be supposed that any land owner would have become connected with the scheme embodied in the act of 1871 unless the maintenance of the levee by competent legal authority was assured. It is, therefore, unjust to the land owners, to say nothing more, than they assented to the construction of the levee. If they are to be deemed to have assented to anything, it must be further said that they assented to a scheme under which a levee was to be constructed *and maintained*, under the authority of the law, from time to time, and so as to accomplish the results contemplated by the legislature. The system devised by the act of 1871 is to be looked at in its entirety. We cannot put out of view a vital part of it and hold the land owners who acted in good faith, and who gave no personal assurances or made any representations responsible for the results to others flowing from invalid legislation and the partial execution of the original plans. If it be said that the plaintiffs' testator would never have purchased the bonds except in the belief that

the act of 1871 was valid, with equal truth it may be said that the land owners never would have sought or desired such legislation except in the belief that the levee would be maintained by the same authority that constructed it."

First. As a matter of fact there was no legal obstacle to the imposition of assessments to repair and maintain this levee after the act of May 29, 1879, adopted to execute the constitutional amendment of 1878. The defendant land owners, many of whom had promoted the construction of the levee, availed themselves of the statute and their right to do so was sustained in Blake vs. People ubi supra.

When this act was passed the levee was in the possession of Defendant Wheelock and his fellow commissioners, not only as Sny Levee Drainage Commissioners, but also as receivers under the appointment of the U. S. Court in Palms' original suit. The land owners formed the new Sny Island Levee Drainage District and Wheelock and his colleagues surrendered possession of it to the new legally formed district, which has ever since kept and maintained and repaired it by means of assessments levied under the law of 1879.

But passing this, the opinion of the Circuit Court of Appeals on this point is opposed to the decisions above cited and in direct conflict with Bidwell vs. City of Pittsburgh, 85 Pa. St., 412, 418, where the Court say, pp. 417, 418: "The power (to take steps to improve a street) was called into action by the petitioners. They asked to have the avenue brought under the operation of the act. They voluntarily asked for the privilege of becoming subject to all its provisions. They asked for the passage of the ordinance directing the work—for the assessment of their lands according to the frontage rule, in order to pay the bonds to be given to raise money to make the improve-

ment. The authorities acceded to the request. They altered their previous position. They assumed the large additional indebtedness, relying upon the words and conduct of the petitioners. The latter declared they would submit themselves to all the charges and responsibilities imposed by that act. They wilfully caused the authorities to believe this as a matter of fact. So believing, the authorities acted upon it. They accepted the offer in the terms in which it was made. The petitioners directed the work. They received and enjoyed the benefits. To now permit them to deny the truth or the efficacy of the assurance given, and continued during the progress of the work, would work a fraud on the city which cannot be sanctioned."

"It is true every one is presumed to know the law, and knowledge thereof is said to be equally open to all. Conceding that the city had knowledge of the law, or ought to have had it, the like legal presumption applies to the plaintiff in error, and his equities derive no strength from that presumption. The city had no reason to believe that he would allege any invalidity in the law which he was praying to have extended over him. The city was misled, not by expressive silence merely of the plaintiff in error, but by his decided and persistent action. It has been held that where a party has acted upon a particular construction of a contract which has been acquiesced in by the other, the latter is estopped from contesting it as the proper construction. Mercer Mining and Manufacturing Co. vs. McKee, 17 P. F. Smith, 170."

*Questions of Gravity and Importance—Continued.*

"The constitutional right against unjust taxation, which the plaintiff in error invokes, is given him for the protection of his private property. He may waive that protection and consent to such action in regard to it as would otherwise be invalid. Having consented, and the other party having acted thereon, and made expenditures and incurred expense predicated thereon, the consent cannot be withdrawn."

In answer to a similar claim—of mutual mistake—the Supreme Court of Ohio say in State vs. Van Horne, 7 Ohio State, 327, 332: "The one" (the taxpayer) "was certainly as much bound to know (the law) as the other" (the bondholders) "and if both were mistaken no principle of law or justice would demand that the taxpayers should retain the fruits of the mistake, and at the same time repudiate those very acts of their own which misled the bondholders and induced them to part with their money; in truth blowing hot to get the bondholders' money and blowing cold to rid themselves of the obligation to refund it."

Granting the statement in the opinion of the Circuit Court of Appeals that "contrary to the expectations of all interested in them those proceedings were adjudged to be without the sanction of law." It does not take out of the rule the case of those defendant land owners who promoted and carried out the scheme for their own benefit and still retain its advantages. They obtained the money from Mr. Palms to complete the levee by the second assessment under the same section of the act which authorized maintenance assessments. Sec. 39, Record, p. 403, *ubi supra*.

Therefore, it seems indisputable that if the principle of estoppel applies at all, it must apply to all the provisions

of the statute. If the rule prevents the promoting defendant land-owners from alleging the unconstitutionality of the statute as to assessments *for constructing the levee*, it must prevent such an allegation against the assessments for *maintaining* the levee.

The defendant land owners who were promoting the scheme did not ask the expenditure of money from contractors and others on the faith *of construction assessments which were not to be binding unless* the repair and maintenance assessments were held valid. They held out as the inducement the entire statute. They asked the money and work of others upon the faith *of all the provisions of the statute*, and by their conduct assured contractors and others that they would not attack the *validity of the law in any particular*. In the language of the opinion in Bidwell vs. City of Pittsburg, *ubi supra*, these contractors and others had no reason to believe that these land owners who were promoting the building of the levee "*would allege any invalidity* in the law which they were praying to have extended over them."

(3) The Circuit Court of Appeals, in the opinion, make no allusion to a very large number of defendant land-owners who have purchased the lands subject to these drainage assessments and agreed to pay them, but the decision holds the assessments void as to their lands.

This is in conflict with many decisions on this question.

Keeler vs. Ashford, 133 U. S., 610, 624.
Crawford vs. Edwards, 33 Mich., 354.
Dickinson vs. Worthington, 10 Fed. R., 860.
Cordova vs. Hood, 17 Wall., 1.
Lovejoy vs. Raymond, 58 Vermont, 509.

*Questions of Gravity and Importance—Legal Effect of Alleged Inadequacy of Construction of Levee.*

(4) The Circuit Court of Appeals, in its opinion, says: "There was evidence tending to show—indeed, we think the weight of evidence was—that the levee built under the Act of 1871 was not adequately constructed." We do not understand the decision is placed on this ground, but it is proper to call it to the attention of this Honorable Court.

In the contract between Wheelock, Jones and Dustin, commissioners (Record, pp. 366-369), it was provided, among other things, "that said parties of the first part, in consideration "of the premises of said levee commissioners hereinafter set forth, agreed to construct and finish the proposed levee of the commissioners in accordance with the specifications now on file in the County Court of Pike County, Illinois, and with the instructions, from time to time, of the chief engineer of said levee commissioners and to his entire satisfaction and approval." Said levee is to be located according to the above general description by the chief engineer of said levee commission. (Record, p. 366.)

After and in consideration of the work to be done by the parties of the first part, the said levee commissioners agreed to pay them as follows: "The work to be paid for in the bonds issued by said levee commissioners at a valuation of ninety per cent of their par value, payments to be made on or before the tenth day of each month, * * * and to be made on estimates furnished by the chief engineer of said levee commissioners, reserving, however, ten per cent of each monthly estimate from each monthly payment until the final and satisfactory completion of the work in this contract, when a final estimate will be made by the chief engineer, which shall be conclusive on the parties to this contract; and upon the making of such final

estimate, the balance appearing due to the said party of the first part shall be paid." * * * "It is further agreed, in case of any disagreement or difference of opinion between the parties hereto as to the true intent and meaning of the contract, the matter shall be referred to the chief engineer of said levee commissioners, and his opinion shall be binding on all the parties to this contract." (Record, pp. 366-367.)

An inspection of this entire contract is invited. It will show how carefully the contract was drawn to protect the commissioners and the persons whom they represented against any default or deficiency in the performance of the contractors' agreement. There are many authorities that under a contract like this there cannot be any appeal from or review of the decision of the chief engineer, except in case of clear proof of fraud.

Savercool vs. Farwell, 17 Mich., 308.
Railroad Co. vs. March, 114 U. S., 549.
Shipman vs. District of Columbia, 119 U. S., 148.
Chicago S. F. & C., R. Co. vs. Price, 138 U. S., 185.
Sheffield & B. Coal, I. & R. Co. vs. Gordon, 151 U. S., 285.

There are many authorities that in a contract like the one at bar the ninety per cent to be paid on the monthly estimates becomes absolutely and unqualifiedly due the contractor at the time named in the contract, regardless of the time of final completion of the contract.

Strauss vs. The Railroad Co., 7 W. Va., 368.
Baltimore & Ohio R. R. vs. Gallahaus, Admr., 14 Grattan, 563.
Hennessy vs. Farrell, 4 Cush., 267.

*Questions of Gravity and Importance—Alleged Laches of Complainants.*

Therefore, when the bonds signed and issued by the commissioners, were purchased by the public all questions as to the character or sufficiency of the construction of the levee had been conclusively and finally decided, and cannot now be set up as a defense to the assessments.

Moreover the bondholders do not claim under the contractors, but under the provisions of Section 35 of the statute.

Sec. 35. "The commissioners may borrow money, not exceeding in amount of assessments unpaid at the time of borrowing, for the construction of any work which they shall be authorized to construct, and may secure the same by notes or bonds, bearing interest at a rate not exceeding ten per centum per annum, and not running beyond one year after the last assessment, on account of which the money is borrowed, shall fall due, which notes or bonds shall not be held to make the commissioners personally liable for the money borrowed, but shall constitute a lien upon the assessment for the repayment of the principal and interest thereof."

(5) The opinion does not put the decision upon the ground of laches of complainants or their testator, but contains this language:

"He (Mr. Palms) was given leave to file such a bill by an order entered in 1879. But he died in 1886 without availing himself of the privilege so given, although a large amount of interest was unpaid, and although nearly $100,000.00 of the bonds of the first issue had fallen due. The present bill was not filed until 1889, about nine years after it could have been filed. If the case depended alone upon the question of laches, there would be strong ground

for holding that the plaintiffs and their testator so long delayed the institution of proceedings against the land owners that a court of equity ought to decline giving them any relief." * * * *

"But without discussing the adjudged cases upon the subject of laches, and passing many questions discussed by counsel, and which we deem it unnecessary to decide, we affirm the decree of the Circuit Court upon these grounds: 1. The act of 1871 was repugnant to the Constitution of Illinois of 1870. 2. The bonds issued under the act were void. 3. The lands intended to be benefited and protected by the levee constructed under the act of 1871 could not be specially assessed by any action taken in conformity with the provisions of that act. 4. Nothing was done or said by the owners of the lands, so intended to be benefited and protected, that estopped them to dispute the validity of the act of 1871, and of all that was done under it, or that created any equity in favor of the holders of bonds to have said lands sold to pay any special assessment or the bonds issued to contractors."

We beg leave to call attention, with the utmost deference to the learned Circuit Court of Appeals, to some inaccuracy in this statement and some erroneous deductions therefrom.

The opinion states that Mr. Palms "was given leave to file such a bill" (viz: a supplemental bill to bring the land owners before the court) "by an order entered in 1879." This is not accurate. The decree of 1879 (Record, pp. 437, 438) did so state, but referred it to a master to ascertain the amounts due to the complainants and other persons, and ordered that after "the coming in of the master's report of the amount or amounts found by him to be due the

complainants or other persons who may come into the cause as aforesaid, and the approval of the said report, * * * the said complainants have the liberty to exhibit and file their supplemental bill or bills against any or all the present or former owners of the said lands alleged in said bill to be benefited by the said levee." The master's report was not filed until July 7th, 1880, and the definite and authoritative leave to Mr. Palms and others to file a supplemental bill for the recovery of the amounts found due them by the master was not granted until July 7th, 1880 (Record, pp. 439 to 441), and this order of leave was limited to the amounts found due by the master, which at that time included only the accrued interest.

The opinion also states: "But he died in 1886 without availing himself of the privilege so given, although a large amount of interest was unpaid, and although nearly $100,000 of the bonds of the first issue had fallen due. The present bill was not filed until 1889, about nine years after it could have been filed."

Whereas the record shows that the first assessments did not fall due until October, 1883, and that none of the Palms bonds matured until July, 1883, when $28,000 fell due, and at his death, November 24th, 1886, only $58,000 had matured, $13,000 of this amount falling due within a few months before his death (Record, pp. 21, 22, 273).

At the date of the decree of July 1880, nothing but interest had accrued. The principal of the first assessment was not to become due until July 1st, 1883, and none of the bonds held by complainant had matured.

In 1880 there were extensive breaks in the levee, followed by more in 1881, which the land owners were spending money in repairing, and it would have been unreason-

able for Mr. Palms during these years to have harassed them with litigation, especially as none of the principal of his bonds was due.

His executors were appointed in 1887 and filed this bill in April, 1889. When the great amount of detailed examination of the titles to the lands in Exhibit "A" and the time necessary to have prepared needed abstracts is considered, they proceeded with unusual speed. Their bill was filed a little more than two years after their appointment; before their entire claim had matured; less than six years after the earliest maturing bonds of the issue of 1872 fell due, and three years before any of the bonds of the issue of 1875 had matured. The earliest maturing bonds of this series did not become due until 1892. The Illinois statute of limitation, cited in the opinion, had not run against any one of Mr. Palms' bonds when the bill was filed.

Again, during the period between the decree of 1880 and the filing of the bill, no such changes in the title of the lands have occurred that defendants will suffer great injury if assessments are now enforced.

If any persons have purchased without notice of complainants' rights to enforce the assessments, then their lands go free. If they purchased with notice they did so at their peril. The acts of estoppel are almost all proven by matters of record.

(6) It is said in the opinion, after quoting the statute of limitations of Illinois for the bringing of actions for the recovery of real estate, "In this case most of the defendants made proof of adverse possession."

Where the parties claim from a common source of title there can be no adverse possession by the owner of the

fee against a lien holder who has not foreclosed his lien and acquired a right to possession. No adverse possession can begin to run against one who has no right to recover possession.

If the opinion refers to defendants who hold tax titles purchased since the assessments, under Illinois and other state decisions no defendant land owner who was in possession or claimed title at the time his lands were assessed for the levee can assert subsequent tax titles bought by him against the lien of the assessments.

> Dubois vs. Campau, 24 Mich., 360.
> Bassett vs. Welch, 22 Wis., 176.
> Sappo vs. Gilbert, 26 Kans., 139.
> McAlpine vs. Zetner, 119 Illinois, 273.
> and Illinois decisions cited infra.

And complainants cannot recover any lien against any of these lands *which are not now held by a title derived from* the original land owner against whom the assessments were made, so that the question of adverse possession is not in the case.

The bill is filed only to enforce the lien of the levee assessments. The validity and amounts thereof are the only questions in the case. The validity and superiority of independent outstanding tax titles in third persons is not involved in this suit.

McAlpine vs. Zitzer, 119 Ill., 273 (1887), was a bill in equity to foreclose a mortgage executed by John Von Gunten, to the appellants. Charles Von Gunten was made a party to the bill, which sought to set aside a tax deed. Charles Von Gunten, the son of John Von Gunten, purchased for an insignificant sum the tax titles to the premises and secured a tax deed to them, his father continuing to exercise proprietorship over the premises. Dur-

ing the suit the son quit-claimed to Julia Zitzer, his sister. The Circuit Court rendered a decree of foreclosure; on appeal to the Appellate Court the bill was dismissed as to the sister, but affirmed in all other respects, then this appeal was taken, when the judgment of the Appellate Court was reversed and that of the Circuit Court affirmed. Held, that as there was collusion between father and son, the tax sale can have no other effect "than if the mortgagor had, himself, been the purchaser at the tax sale, and we hold that the tax title is subject to the mortgage. Where there is no collusion, "mere legal titles are for trial and determination in courts of law," and independent legal titles which are paramount should not be drawn in controversy."

Citing Gage vs. Perry, 93 Ill., 176
Bozarth vs. Landers, 113 Ill., 181.

XLVII. Wherefore your petitioners pray that this Honorable Court will be pleased to grant a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit to bring up this case to this Honorable Court for such proceedings as shall seem just.

Henry M. Duffield
Counsel for Petitioners

MICHAEL W. O'BRIEN,
FRANCIS F. PALMS,
CLOTHILDE PALMS BOOK,
Petitioners.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MICHIGAN,
COUNTY OF WAYNE, } ss.

Michael W. O'Brien being duly sworn on his oath says that he is one of the petitioners in the foregoing petition and has read the same, and that the same is true to the deponent's knowledge, information and belief and deponent's knowledge is derived from the fact that he has acted for such petitioners in all matters connected with this litigation.

M. W. O'BRIEN.

Subscribed and sworn to before me this 27th day of March, A. D. 1900.

DIVIE B. DUFFIELD,
Notary Public, Wayne County, Michigan.

We hereby certify that we have examined the foregoing petition and in our opinion the petition is well founded and the case is one in which the prayer of the petition should be granted.

ALFRED RUSSEL.
DON M. DICKINSON.

# APPENDIX A.

## SCHEDULE OF LANDS OF TYPICAL DEFENDANTS.

NOTE.—Exhibit "A" has two series of page numbers, i. e., the first from page 1 to 133. *This is the second assessment.*

The second series begins with p. 1 following p. 133 and continues to the end of the volume, but is the *first assessment.*

The starred figures denote the pages of the *second series*, but *first assessment.*

The figures without stars denote the *first series*, but *second assessment.*

### DEFENDANTS WHO WERE PETITIONERS FOR FIRST ASSESSMENT.

| NAME OF DEFENDANTS AND PETITIONERS. | Description of Lands in Exhibits "A" and "X." | Sec. | Twp. | Range. | Amount of 1st Assess. | Amount of 2d Assess. | Amount of Total Assess. | Page of Ex. "A." | | Page of Ex. "X." | Referred to in Proofs. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| M. M. Aldrich..... | S. W..... | 6 | 5 | 7 | $309 06 | $310 94 | $620 00 | *41 | 43 | 2 | Admits the fact. Answer of J. Wheelock et al., pp. 55-40. |
| | W. ½ N. E..... | 7 | 5 | 7 | 68 45 | 97 09 | 165 54 | *42 | 44 | | |
| Melville D. Massie.....| E. ½ S. W..... | 7 | 5 | 6 | 436 00 | 130 40 | 566 40 | *54 | 56 | 35 | Admits the fact. Answer of J. G. Wheelock et al., Record, pp. 55-40. |
| | S. ½ S. E. S. W..... | 17 | 5 | 6 | 43 87 | 13 15 | 57 02 | *55 | 57 | | |
| | S. W. S. W..... | 17 | 5 | 6 | 162 19 | 48 54 | 210 73 | *55 | 57 | | |
| | 10 acres S. side N. E. N. E..... | 19 | 5 | 6 | 218 00 | 16 30 | 234 30 | *56 | 58 | | In Compt's testimony, Record, p. 96. |
| | W. ½ N. E..... | 19 | 5 | 6 | 436 00 | 130 40 | 566 40 | *56 | 58 | | |
| | N. W. N. W..... | 20 | 5 | 6 | 88 00 | 26 40 | 114 40 | *57 | 59 | | |
| | S. W. N. W..... | 20 | 5 | 6 | 218 00 | 65 20 | 283 20 | *57 | 59 | | |
| | N. W. S. E. except 10 acres on N. side..... | 26 | 5 | 7 | 194 34 | 53 46 | 247 80 | *50 | 52 | | |
| | N. pt. S. W. S. E..... | 26 | 5 | 7 | 60 82 | 13 52 | 74 34 | *50 | 52 | | |
| Sammel M. Spencer....| S. ½ S. W. E. of Sny .. 43 16-100 acres S. E. cor. N. W. ¼..... | 18 | 4 | 7 | 311 95 | 90 30 | 402 25 | *26 | 28 | 50 | Admits the fact. Answer of J. G. Wheelock et al., Record, pp. 55-40. |
| | N. W. ¼ S. of Wabash Ry..... ..... .... | 19 | 4 | 7 | 1,153 38 | 344 97 | 1,498 35 | *27 | 28 | | |
| | | 19 | 4 | 7 | 1,153 38 | 344 97 | 1,498 35 | *27 | 28 | | Compt's testimony, Record, p. 74. |

## DEFENDANTS WHO WERE PETITIONERS FOR SECOND ASSESSMENT.

| NAME OF DEFENDANTS AND PETITIONERS. | Description of Lands in Exhibits "A" and "X." | Sec | Twp. | Range. | Amount of 1st Assess. | Amount of 2d Assess. | Amount of Total Assess. | Page of Ex. "A." | Page of Ex. "X." | Referred to in Proofs. |
|---|---|---|---|---|---|---|---|---|---|---|
| Norman Brown | W. ½ N. W. | 10 | 7 | 5 | 436 00 | 130 40 | 566 40 | *83 | 87 | 6 Admits the fact. Answer of J. G. Wheelock et al., Record, pp. 55-40. |
| | S. E. N. W. | 10 | 7 | 5 | 218 00 | 65 20 | 283 20 | *84 | 87 | |
| | S. W. | 10 | 7 | 5 | 872 00 | 260 80 | 1,132 80 | *84 | 87 | |
| Charles N. Clark | 120 acres S. end S. E. | 4 | 5 | 7 | 811 13 | 242 53 | 1,053 66 | *40 | 42 | 7 Admits the fact. Answer of J. G. Wheelock et al., pp. 55-40. |
| | N. E. | 9 | 5 | 7 | 679 91 | 230 26 | 910 17 | *43 | 44 | |
| | S. E. | 9 | 5 | 7 | 781 96 | 234 91 | 1,016 87 | *43 | 45 | |
| | Und. ½ S. W. | 2 | 7 | 5 | 872 00 | 260 80 | 1,132 80 | *80 | 83 | Compt's testimony, Record, p. 60. |
| | Und. ½ S. E. | 2 | 7 | 5 | 872 00 | 260 80 | 1,132 80 | *80 | 83 | |
| | Und. ½ N. E. | 11 | 7 | 5 | 872 00 | 260 80 | 1,132 80 | *84 | 83 | |
| | Und. ½ N. W. | 11 | 7 | 5 | 872 00 | 260 80 | 1,132 80 | *84 | 83 | |

## DEFENDANTS WHO WERE SIGNERS OF TRUST DEED.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Richard H. Baker | S. ½ S. W. S. E. | 6 | 4 | 7 | 90 | 27 | 1 17 | *21 | 22 | 3 Admits the fact. Answer of J. G. Wheelock et al., Record, pp. 55-41. |
| | N. E. S. W. | 12 | 4 | 8 | 218 00 | 65 20 | 283 20 | *13 | 13 | |
| | W. ½ E. ½ N. W. | 7 | 4 | 7 | 325 03 | 97 21 | 422 24 | *21 | 23 | |
| | N. E. N. W. S. W. | 12 | 4 | 8 | 54 50 | 16 30 | 70 80 | *13 | 13 | Copy of Trust Deed referred to p. 499, not printed. |
| | E. 10 acres S. ½ W. ½ N. W. | 7 | 4 | 7 | 338 66 | 99 64 | 438 30 | *22 | 23 | |
| | S. E. N. W. S. W. | 12 | 4 | 8 | 54 50 | 16 30 | 70 80 | *13 | 13 | |
| | Lot 1 E. side S. W. | 7 | 4 | 7 | 381 50 | 114 10 | 495 60 | *22 | 23 | |
| | W. ½ N. W. S. W. | 12 | 4 | 8 | 109 00 | 32 60 | 241 60 | *13 | 13 | |
| | Lot 2 mid. sub. S. W. | 7 | 4 | 7 | 436 00 | 130 40 | 566 40 | *22 | 23 | |
| | S. W. S. W. | 12 | 4 | 8 | 145 35 | 43 47 | 188 82 | *13 | 13 | |
| William H. Gray | S. W. | 24 | 6 | 6 | 701 36 | 209 76 | 911 12 | *70 | 72 | 19 Admits the fact. Answer of J. G. Wheelock et al., Record, pp. 55-41. |
| | N. W. | 25 | 6 | 6 | 854 72 | 255 63 | 1,110 35 | *70 | 72 | |
| | N. W. | 19 | 6 | 5 | 976 90 | 292 16 | 1,269 06 | *73 | 76 | Testimony, Record, p. 277. |
| William D. Shinn | N. W. ¼ | 30 | 6 | 5 | 872 00 | 260 80 | 1,132 80 | *75 | 78 | 55 Admits the fact. Answer of J. G. Wheelock et al., Record pp. 55-41. |
| | N. E. ¼ | 25 | 6 | 6 | 872 00 | 260 80 | 1,132 80 | *70 | 72 | |
| | S. W. ¼ | 36 | 6 | 6 | 872 00 | 260 80 | 1,132 80 | *71 | 74 | |

## DEFENDANTS WHO PETITIONED FOR ORGANIZATION OF SNY ISLAND LEVEE DRAINAGE DISTRICT.

| NAME OF DEFENDANTS AND PETITIONERS. | Description of Lands in Exhibits "A" and "X." | Sec. | Twp. | Range. | Amount of 1st Assess. | Amount of 2d Assess. | Amount of Total Assess. | Page of Ex. "A." | Page of Ex. "X." | Referred to in Proofs. |
|---|---|---|---|---|---|---|---|---|---|---|
| Isaac Barton | S. E. | 29 | 6 | 5 | 533 17 | 159 45 | 692 62 | *75 | 78 | 5 Admits the fact. Answer of J. G. Wheelock et al., pp. 55-41. |
| | E. ½ N. E. | 32 | 6 | 5 | 654 00 | 195 00 | 849 00 | *76 | 79 | |
| | Und. ½ S. E. | 3 | 6 | 6 | 872 00 | 260 80 | 1,132 80 | *65 | 67 | |
| | N. E. N. W. | 10 | 7 | 5 | 217 99 | 65 19 | 283 18 | *83 | 86 | |
| | W. ½ N. W. S. W. | 3 | 7 | 5 | 872 00 | 260 80 | 1,132 80 | *81 | 84 | |
| | N. ½ S. E. | 10 | 7 | 5 | 872 00 | 260 80 | 1,132 80 | *84 | 87 | |
| | N. E. ¼ | 26 | 6 | 6 | 857 72 | 256 54 | 1,114 26 | *70 | 73 | |
| Ozias M. Hatch | N. E. | 25 | 4 | 8 | 872 00 | 260 80 | 1,132 80 | *19 | 19 | 22 Admits the fact. Answer of J. G. Wheelock et al., pp. 55-41. |
| | N. W. | 25 | 4 | 8 | 872 00 | 260 80 | 1,132 80 | *19 | 19 | |
| | N. E. | 4 | 6 | 6 | 872 00 | 260 80 | 1,132 80 | *65 | 68 | |

## DEFENDANTS WHO WERE MADE PARTIES TO SNY ISLAND LEVEE DRAINAGE DISTRICT.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| J. W. Boyd | S. W. N. E. | 6 | 5 | 6 | 221 37 | 66 20 | 287 57 | *52 | 54 | 4 Record, p. 34. |
| | S. E. N. E. | 6 | 5 | 6 | 100 94 | 30 20 | 131 14 | *52 | 54 | Record, p. 101. |
| | E. ½ N. pt. W. ½ S. W. | 6 | 5 | 6 | 154 23 | 46 12 | 200 35 | *52 | 54 | |
| | N. pt. E. ½ S. W. | 6 | 5 | 6 | 209 73 | 62 72 | 272 45 | *52 | 54 | |
| | W. ½ S. E. | 6 | 5 | 6 | 436 00 | 130 46 | 566 40 | *53 | 55 | |
| George W. Wells | S. pt. E. ½ N. W. | 18 | 7 | 4 | 42 82 | 12 81 | 55 63 | *93 | 96 | 66 Record, p. 36. |
| | E. ½ N. E. S. W. | 18 | 7 | 4 | 16 34 | 4 89 | 21 23 | *94 | 97 | Record, p. 101. |
| John H. Webster | S. pt. S. E. | 18 | 7 | 4 | 87 72 | 34 25 | 121 97 | *94 | 97 | 67 Record, p. 36. |
| | N. E. pt. N. E. | 19 | 7 | 4 | 545 33 | 163 33 | 708 66 | *94 | 97 | Record, p. 101. |

## DEFENDANTS WHO ACQUIRED TITLE FROM PETITIONERS FOR FIRST AND SECOND ASSESSMENTS AND ORGANIZATION OF SNY ISLAND LEVEE DRAINAGE DISTRICT.

| DEFENDANT'S NAME. | NAME OF PETITIONERS. | Description of Lands in Exhibits "A" and "X." | Sec. | Twp. | Rge. | Amount of 1st Assess. | Amount of 2d Assess. | Amount of Total Assess. | Page of Ex. "A." | Page of Ex. "X." | Referred to in Proofs. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Abner V. Wills | James M. Spencer | 28 67-100 acres N. of Ry. N. E. ¼ | 23 | 4 | 8 | 950 64 | 284 32 | 1,234 96 | *18 | 18 | 64 | Record, p. 28. |
| | | 8 52-100 acres N. side N. W. ¼ | 23 | 4 | 8 | 839 02 | 250 93 | 1,089 95 | *18 | 18 | | Record, p. 124. |
| Joel K. Scarborough | James M. Spencer | S. ½ S. W. | 24 | 4 | 8 | 872 00 | 260 80 | 1,132 80 | *19 | 19 | 58 | Record, p. 28. |
| | | N. E. ¼ | 25 | 4 | 8 | 872 00 | 260 80 | 1,132 80 | *19 | 19 | | Record, p. 254. |
| | | N. E. ¼ | 26 | 4 | 8 | 872 00 | 260 80 | 1,132 80 | *19 | 19 | | |
| | | N. W. ¼ | 26 | 4 | 8 | 860 01 | 253 53 | 1,113 54 | *19 | 20 | | |
| | | S. W. ¼ | 26 | 4 | 8 | 267 97 | 80 15 | 348 12 | *19 | 20 | | |
| | | S. E. ¼ | 26 | 4 | 8 | 885 62 | 264 87 | 1,150 49 | *19 | 20 | | |
| Jacob H. Dickason | N. S. Rouse | N. W. N. E. | 27 | 4 | 8 | 187 53 | 39 03 | 226 56 | *19 | 20 | 11 | Record, p. 27. Record, p. 146. |

## DEFENDANTS WHO HAVE ACQUIRED TITLE SINCE DATE OF PETITION FOR SNY ISLAND LEVEE DRAINAGE DISTRICT, JULY 26, 1880.

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Joel L. Doud | | S. W. N. E. | 26 | 4 | 7 | 45 46 | 10 63 | 56 09 | *30 | 32 | 12 | Record, p. 37. |
| | | N. W. S. E. | 26 | 4 | 7 | 52 78 | 15 92 | 68 70 | *31 | 32 | | Record, p. 313. |
| | | N. E. S. E. | 32 | 4 | 7 | 218 00 | 65 20 | 283 20 | *35 | 36 | | |
| William P. Pryor | | N. ½ N. W. | 12 | 6 | 6 | 70 67 | 21 17 | 91 84 | *67 | 70 | 44 | Record, p. 38. |
| | | S. ½ N. W. | 12 | 6 | 6 | 174 90 | 52 33 | 227 23 | *67 | 70 | | Record, p. 319. |
| Charles Robb | | S. E. S. W. | 26 | 5 | 6 | 3 49 | 1 04 | 4 53 | *59 | 61 | 46 | Record, p. 38. |
| | | N. ½ N. E. N. W. | 35 | 5 | 6 | 54 28 | 16 13 | 70 41 | *62 | 64 | | Record, p. 318. |
| | | N. ½ N. W. N. W. | 35 | 5 | 6 | 72 08 | 21 55 | 93 63 | *63 | 65 | | |
| | | S. ½ N. W. N. W. | 35 | 5 | 6 | 101 69 | 30 41 | 132 10 | *63 | 65 | | |

## DEFENDANTS WHO ACQUIRED TITLE FROM SIGNERS OF TRUST DEEDS.

| DEFENDANT'S NAME. | SIGNERS OF TRUST DEEDS. | Description of Lands in Exhibits "A" and "X." | Sec. | Twp. | Rge. | Amount of 1st Assess. | Amount of 2d Assess. | Amount of Total Assess. | Page of Ex. "A." | | Page of Ex. "X." | Referred to in Proofs. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Daniel C. Bates | R. M. Atkinson | 20 acres W. side E. ½ | 13 | 5 | 7 | 1,744 00 | 521 60 | 2,265 60 | *44 | 46 | 4 | Record, p. 287. |
| Wm. P. Lovett | R. M. Atkinson | 76 acres S., pt. N. W. | 13 | 7 | 5 | 782 95 | 234 18 | 1,017 13 | *85 | 88 | 31 | Record, p. 196. |
| | | S. W. ¼ | 13 | 7 | 5 | 872 00 | 260 80 | 1,132 80 | *85 | 88 | | |

## DEFENDANTS WHO HAVE TAKEN TITLE BY DEEDS RECOGNIZING THE LEVY OF THE ASSESSMENTS.

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| C. M. Alger | | S. E. Und. ½ | 8 | 4 | 8 | 872 00 | 260 80 | 1,132 80 | *11 | 11 | 1 | Record, p. 40. |
| | | W. ½ S. W. | 9 | 4 | 8 | 872 00 | 260 80 | 1,132 80 | *11 | 12 | | Transcript, p. 580. |
| | | Lots 12 and 13, W. ½ N. W. | 16 | 4 | 8 | 436 00 | 130 40 | 566 40 | *15 | 16 | | |
| | | E. ½ N. E. | 17 | 4 | 8 | 401 39 | 120 04 | 521 43 | *17 | 17 | | |
| | | 11 99-100 acres N. W. Cor. N. E. | 17 | 4 | 8 | 218 00 | 65 20 | 283 20 | *17 | 17 | | |
| Louis Green | | S. W. | 32 | 4 | 7 | 872 00 | 260 80 | 1,132 80 | *34 | 36 | 19 | Record, p. 40. Transcript, p. 580. |
| Christopher D. Greene | | W. ½ S. W. | 28 | 5 | 6 | 436 00 | 130 40 | 566 40 | *60 | 62 | 20 | Record, p. 40. Transcript, p. 580. |

## DEFENDANTS WHO ARE HEIRS AT LAW OF PERSONS ESTOPPED.

| DEFENDANT'S NAME. | ANCESTOR'S NAME. | Description of Lands in Exhibits "A" and "X." | Sec. | Twp. | Rge. | Amount of 1st Assess. | Amount of 2d Assess. | Amount of Total Assess. | Page of Ex. "A." | Page of Ex. "X." | Referred to in Proofs. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| H. B. Atkinson | R. M. Atkinson | N. E. Und. ½ | 14 | 5 | 7 | 872 00 | 260 80 | 1,132 80 | *44 46 | 1 | Record, p. 260. |
| | | Frac. S. W. Und. ½ | 22 | 5 | 7 | 231 57 | 49 45 | 281 02 | *47 49 | | |
| | | S. E. Und. ½ | 22 | 5 | 7 | 752 07 | 267 17 | 1,019 24 | *47 49 | | |
| | | N. E. Und. ½ | 19 | 6 | 5 | 608 76 | 182 06 | 790 82 | *73 76 | | |
| | | S. W. S. W. Und. ½ | 19 | 6 | 5 | 154 99 | 46 35 | 201 34 | *73 76 | | |
| | | S. E. Und. ½ | 19 | 6 | 5 | 804 42 | 240 60 | 1,045 02 | *73 76 | | |
| | | N. E. Und. ½ | 7 | 6 | 6 | 840 22 | 240 53 | 1,080 75 | *66 68 | | |
| | | N. W. N. E. | 11 | 6 | 6 | 218 00 | 65 20 | 283 20 | *67 69 | | |
| | | S. ½ N. E. | 11 | 6 | 6 | 342 91 | 102 55 | 445 46 | *67 69 | | |
| | | S. W. Und. ½ | 30 | 7 | 4 | 438 35 | 131 50 | 569 85 | *101 101 | | |
| Harry Higbee | | S. ½ S. W. | 5 | 5 | 6 | 5 70 | 1 70 | 7 40 | *52 54 | 24 | Record, p. 270. |
| | | N. ½ N. W. | 8 | 5 | 6 | 147 22 | 44 35 | 191 57 | *54 56 | | |
| | | N. E. | 29 | 5 | 6 | 872 00 | 260 80 | 1,132 80 | *60 62 | | |
| | | S. W. | 29 | 5 | 6 | 872 00 | 260 80 | 1,132 80 | *60 62 | | |
| | | S. W. | 33 | 5 | 6 | 872 00 | 260 80 | 1,132 80 | *62 64 | | |
| | | S. E. | 31 | 5 | 6 | 744 08 | 222 54 | 966 62 | *61 63 | | |
| | | N. E. | 32 | 5 | 6 | 872 00 | 260 80 | 1,132 80 | *61 63 | | |
| | | Section | 31 | 7 | 4 | 1,646 59 | 556 67 | 2,203 26 | *101 101 | | |